

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

2018 JAN -4 PM 4:37

CLERK OF COURT

CTJ

CQUENTIA SERIES, LLC and
HTG SERIES, a series declared by
CQUENTIA SERIES, LLC

Plaintiffs,

v.

CHANNEL (H), INC. and
ROBERT CAPELLI,

Defendants.

ORIGINAL

**DEFENDANTS' MOTION AND BRIEF FOR
LEAVE TO AMEND NOTICE OF REMOVAL**

TO THE HONORABLE JOHN H. MCBRYDE, UNITED STATES DISTRICT JUDGE:

Pursuant to Local Civil Rule 15.1 and 28 U.S.C. § 1653, Defendants CHANNEL (H), INC. (“Channel (H)”) and ROBERT CAPELLI (“Capelli,” collectively “Defendants”), specially appearing by and through their undersigned counsel, hereby move this Court for leave to amend its Notice of Removal (Doc. 11).

IN SUPPORT THEREOF, DEFENDANTS state as follows:

1. On November 14, 2017, Defendants electronically filed a notice of removal removing to this Court Plaintiffs CQUENTIA SERIES, LLC (“CQ”) and HTG SERIES, a series declared by CQUENTIA SERIES, LLC (“HTG,” collectively “Plaintiffs”) petition filed in the 348th Judicial District, in the District Court of the State of Texas, in and for the County of Tarrant. [Doc. 1] (“Notice of Removal”). In the Notice of Removal, Defendants noted that in the State Court Petition, “Plaintiffs allege that Robert Capelli is an individual residing in Placer County, California.”. On November 20, 2017 Defendants submitted for filing a paper version of same.

By order dated November 21, 2017, this Court ordered that Defendants notice of removal be unfiled due to deficiencies with Judge McBryde's Standing Order and directed Defendants to submit proper paper copies by November 28, 2017. *See* [Doc. 9].

2. On November 21, 2017, Defendants filed an Answer to the Petition. [Doc. 10]. In their Answer, Defendants deny Plaintiffs' allegation that Defendant Robert Capelli resides in California. *See* [Doc. 10] at ¶ 5.

3. On November 28, 2017, Defendants submitted for filing proper paper copies of the Notice of Removal. [Doc. 11].

4. In the Notice of Removal, Defendants noted that in the State Court Petition, "Plaintiffs allege that Robert Capelli is an individual residing in Placer County, California." *See* [Doc. 11] at 4.

5. On or about December 12, 2017, Plaintiffs filed a Motion to Remand asserting, *inter alia*, that this Court lacked diversity jurisdiction in part, because of Defendants' reference to Plaintiffs' allegation that Robert Capelli resided in California. *See* [Doc. 18].

6. However, at the time that Defendants filed their notice of removal to this Court, Defendant Robert Capelli was a citizen and domiciliary of Massachusetts, not California. *See* Appendix to Response to Motion to Remand ("Response App."); Declaration of Robert Capelli dated January 4, 2018 ("Capelli Decl."), ¶¶ 2-5. At all relevant times, Defendant Capelli resided in Amesbury, Massachusetts. *See id.*

ARGUMENT

Under 28 U.S.C. § 1653, "[d]efective allegations of jurisdiction may be amended, upon terms, in the trial or appellate courts" after the thirty-day period for removing a state court action under 28 U.S.C. § 1446(b) has expired. *Sanders v. Leggett & Platt, Inc.*, 2010 WL 3282978, at *1 (N.D. Tex. Aug. 17, 2010); *see also Moore v. Gladiator Events, LLC*, 2015 WL 5459625 at

*4 (N.D. Tex. Sept. 15, 2015) (granting motion to amend notice of removal to correct jurisdictional allegations concerning citizenship of members of LLC and individuals). “Section 1653 is liberally construed to allow a party to cure technical defects, including the failure to specifically allege the citizenship of parties.” *Moore*, 2015 WL 5459625 at *4 (internal quotations omitted).

Here, Defendants seek leave to amend their Notice of Removal to clarify Capelli’s domicile in Massachusetts, as well as to assert the citizenship of the members of each of the Plaintiffs. In consideration of same, a copy of the proposed amended notice of removal is filed herewith.

WHEREFORE, PREMISES CONSIDERED, Defendants respectfully request that the Court grant their request for an order amending the notice of removal.

Dated: January 4, 2018

Respectfully submitted,

By: _____
MARGARET HORTON APGAR
THE APGAR FIRM, PLLC
State Bar No. 24036805
1914 Skillman Street, Suite 110-150
Dallas, Texas 75206
(214) 707-2791 (Phone)
(214) 279-6050 (Fax)
margaret@apgarfirm.com

Attorneys for Specially Appearing Defendants

Of Counsel:
Brett E. Lewis
(*pro hac vice* forthcoming)
Justin Mercer
(*pro hac vice* forthcoming)
Lewis & Lin, LLC
45 Main Street, Suite 608
Brooklyn, New York 11201
Tel. (718) 243-9323
brett@ilawco.com
justin@ilawco.com

CERTIFICATE OF CONFERENCE

The undersigned hereby certifies that a conference was held on Thursday, January 4, 2018 with Rafael C. Rodriguez, counsel for record for Plaintiffs in this proceeding, in an attempt to resolve the issues contained in the foregoing Motion for Leave to Amend Notice of Removal. Counsel for Plaintiffs are opposed to the relief sought herein. A reasonable effort has been made to resolve the dispute raised herein without the necessity of court intervention and the effort failed. Therefore, this Motion for Leave to Amend Notice of Removal is presented to the Court for determination.



MARGARET HORTON APGAR

CERTIFICATE OF SERVICE

I hereby certify that on January 4, 2018, I served the following attorneys of record in accordance with the Federal Rules of Civil Procedure, including via email/electronic service:

Rafael C. Rodriguez
rrodriguez@winstead.com
WINSTEAD PC
300 Throckmorton Street, Suite 1700
Fort Worth, Texas 76102
Telephone: (817) 420-8200
Facsimile: (817) 420-8201

Bill Warren
bill.warren@kellyhart.com
KELLY HART & HALLMAN LLP
201 Main Street, Suite 2500
Fort Worth, Texas 76102
Telephone: (817) 332-2500
Facsimile: (817) 878-9280



MARGARET HORTON APGAR